IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.908 of 2006
IN
Civil Writ Jurisdiction Case No. 3890 of 2006

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1. 1.Bihar Rajya Koshagar Avam Lekha Pratiniyukta Karamchari Sangh, Head Office Boring Canal Road(West), Patna, through its President Raju Prasad, S/o Late Ram Chandra Prasad, Ram Sahay Lane, Mahendru, Patna.6.
2. Nandu Ram, General Secretary of the Association, son of Ramrup Ram, resident of New Punaichak, Boring Canal Road(West), Patna.
3. Syed Md. Ashfaque, son of Late S.M.Hussain, Accountant, Sasaram Treasury, District Rohtas at Sasaram
4. Dayanand Thakur, son of Late Radha Krishna Thakur, Accountant, Patna Treasury, Patna
5. Ashok Kumar Paswan, S/o Late Govind Paswan, Accountant, Patna Treasury, Patna
6. Navin Kumar Sinha, son of Late Sukhdeo Prasad, Accountant, Patna Treasury, Patna
7. Veena Kumari, daughter of R.M.Lal Srivastava, Accountant, Patna Treasury, Patna
8. Binay Chandra Mishra, S/o Latge Susheel Chandra Mishrqa, Accountant, Patna Treasury, Patna
9. Kanu Pada Das, S/o Late Rasik Lal Das, Accountant, Patna Treasury, Patna
10. Tanuja Mani, D/o Muneshwar Prasad, Accountant, Patna Treasury, Patna
11. Hiranmay Gupta, S/o Late Mathura Pd. Gupta, Accountant, Patna Treasury, Patna
12. Bikrama Singh, S/o Late Indrajeet Singh, Accountant, Sasaram Treasury, District Rohtas
13. Shashishekhar Pandey, S/o Baidyanath Pandey, Accountant, Sub Treasury,Barh, District Patna
14. Anand Mohan Singh, S/o Late Yogendra Prasad Singh, Accountant, Lakhisarai Treasury, District LOakhisarai
15. Sachidanand Choudhary, S/o Late Markandey Choudhary, Accountant, Jamui Treasury, District Jamui
16. Chandra Prakash Maskara alias C.P.Maskara, S/o Late Lakhi Pd. Maskara, Accountant, Jamui Treasury, District Jamui
17. Onkar Prasad, son of Late Bundi Lal, Accountant, AurangabadTreasury, District Aurangabad
18. Virendra Kumar Kamlesh, S/o Rajendra Pd. Razak, Accountant, Madhubani Treasury,District Madhubani
19. Ashok Kumar, S/o Jagdish Pd, Accountant, Muzaffarpur Treasury, Muzaffarpur
20. Neyaz Ahmad, S/o Late Mahmood Alam, Accountant Gaya Treasury, District Gaya
21. Bijay Kumar, son of Late Bal Krishna Pd, Accountant, Munger Treasury, District Munger
22. Dharmendra Kumar, s/o Late Dwarika Pd. Singh, Accountant Bettiah Treasury,District West Champran
23. Vinod Kumar Sharma, S/o Ram Chandra Singh, Accountant Saharsa Treasury, District Saharsa
24. Arun Kumar Singh, son of Late Laxmi Prasad, Accountant Saharsa

Treasury, District Saharsa

25. Bhola Nath Gupta, s/o Chhote Lal Gupta, Accountant Saharsa Treasury, District Saharsa
26. Jay Prakash, S/o Basudeo Prasad, Accountant Madhepura Treasury, District Madhepura
27. Om Prakash Verma, S/o Kashi Pd. Verma, Accountant Madhepura Treasury, District Madhepura
28. Bhavnath Jha, S/o Late Yadubir Jha, Accountant Nawadah Treasury, District Nawadah
29. Rajni Kant Sharma, S/o Late Kedar Nath Sharma, Accountant Nawadah Treasury, District Nawadah
30. Ajay Prakash Sinha, S/o Krishna Prakash Sinha, Accountant MuzaffarpurTreasury, Muzaffarpur

.... Appellants

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna
2. The Commissioner cum Secrertary,Finance Department,Government of Bihar, Patna
3.The Secretary, Cabinet Secretariat and Coordination Department, Government of Bihar, Patna
4. The Secretary Department of Personnel and Administrative Reforms, Government of Bihar, Patna
5. The Additional Finance Commissioner Expenditure, Government of Bihar, Patna
6. Ajay Kumar Thakur, son of Devendra Nath Thakur, Accountant, Sub Treasury Barh, District Patna
7. Laliteshwar Prasad, son of Late Laxmi Prasad, Accountant, Motihari Treasury, District East Champaran.
8. Satish Chandra Mishra, son of Late Laxmi Narayan Mishra, Accountant, Motihari Treasury , District East Champaran.
9. Sudhir Kumar, son of Ram Lochan Prasad, Accountant, Motihari Treasury, District EastChamparan.
10. Jai Prakash, son of Mahendra Prasad, Accuntant, Munger Treasury, District Munger.
11. Surendra Kumar, son of Latye Jagannath Das, Accountant Sitamarhi Treasury, District Siutamarhi.
12. Rabindra Kumar Singh, son of Late Pradeep Narayan Singh, Accountant, Sitamarhi Treasury, District Sitamarhi.
13. Ranjan Kumar, son of Sri Radha Raman Prasad, Accountant, Sitamarhi Treasury, District Sitamarhi.
14. Krishna Murari Prasad, son of Late Kesho Prasad, Accountant, Gopalganj Treasury, Dist.Gopalganj.
15. Kumar Digvijay Singh, son of Late Basudeo Singh, Accountant, Gaya Treasury, Gaya.
16. Ram Krishna Ram, son of Late Ram Chandra Prajapti, Accountant, Chapra Treasury, District-Saran.
17. Arun Kumar Gupta, son of Late Jaggan Prasad, Accountant, Chapra Treasury, District Saran.
18. Ibrar Ahmad, son of Late Md. Quayamuddin, Accountant, Chapra Treasury, District Saran.

19. Anand Kumar Pandey, son of Arun Kant Pandey, Accountant, Muzaffarpur Treasury, Muzaffarpur.
20. Md. Reyazuddin, son of Late Imamuddin, Accountant, Aurangabad Treasury, Dist-Aurangabad.
21. Binod Kumar Verma, son of LateMangu Lal Verma, Accountant, Aurangabad Treasury, Dist-Aurangabad.

.... Respondent/s

with

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Letters Patent Appeal No. 963 of 2006
IN
Civil Writ Jurisdiction , Case No. 3890 of 2006

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1.Laliteshwar Prasad , son of Late Laxmi Prasad, Accountant, Motihari Treasury, District-East Champaran.
2. Satish Chandra Mishra, son of Late Laxmi Narayan Mishra, Accountant, Motihari Treasury, District-East Champaran.
3. Sudhir Kumar, son of Ram Lochan Prasad, Accountant, Motihari Treasury, District-East Champaran.
4. Jai Prakash, son of Mahendra Prasad, Accountant, Munger Treasury, District Munger.
5. Surendra Kumar, son of Late Jagannath Das, Accountant, Sitamarhi Treasury District-Sitamarhi.
6. Rabindra Kumar Singh, son of Late Pradeep Narayan Singh, Accountant, Sitamarhi Treasury, District-Sitamarhi.
7. Ranjan Kumar, son of Sri Radha Raman Prasad, Accountant, Sitamarhi Treasury, District-Sitamarhi.
8. Kumar Digvijay Singh, son of late Basudeo Singh, Accountant, Gaya Treasury, Gaya.
9. Ibrar Ahmad, S/o Late Md. Quayamuddin, Accountant, Chapra Treasury, Dist-Saran.
10.Anand Kumar Pandey, S/o Arun Kant Pandey, Accountant, Muzaffarpur Treasury, Muzaffarpur.
11. Md. Reyazuddin,S/o Late Imamuddin, Accountant, Aurangabad Treasury, District-Aurangabad.
18. Binod Kumar Verma, S/o LateMangu Lal Verma, Accountant, Aurangabad Treasury, District-Aurangabad.

.... Appellant/s

Versus

1.The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The commissioner cum-Secretary, Finance Deptt., Govt. of Bihar, Patna.
3. The Secretary, Cabinet Secretariat and C0-ordination Deptt., Govt. of Bihar, Patna.
4. The Secretary, Deptt. Of Personnel and Administrative Rdforms, Govt. of Bihar, Patna.
5. The Addl. Finance Commissioner(Expenditure) Finance Deptt. Govt. of Bihar, Patna.
6. Bihar Rajya Koshagar Avam Lekha Pratiniyukta Karamchari Singh, Head Office-Boring Canal Road(West), Patna through its President Raju Prasad, S/o Late Ram Chandra Prasad, Ram Sahay Lane, Mahendru, Patna.-6
7. Nandu Ram, General Secretary of the Association, S/o Ramrup Ram, R/o New

Punaichak, Boring Canal Road(West), Patna.
8. Syed Md. Ashfaque, S/o Late S. M. Hussain, Accountant, Sasaram Treasury, District Rohtas at Sasaram.
9. Daya Nand Thakur, son of Late Radha Krishna Thakur, Accountant, Patna Treasury, Patna.
10.Ashok Kumar Paswan, S/o Late Govind Paswan, Accountant, Patna Treasury, Patna.
11. Navin Kumar Sinha, S/o Sri Sukhdeo Prasad, Accountant, Patna Treasury, Patna.
12. Veena Kumari, d/o R.M. Lal Srivastava, Accountant, Patna Treasury, Patna.
13. Kanu Pada Das, S/o Late Rasik Lal Das,Accountant,Patna Treasury,Patna
14. Tanuja Mani, D/o Late Muneshwar Prasad, Accountant, Patna Treasury, Patna.
15. Hiranmay Gupta, s/o Late Mathura Prasad Gupta, Accountant, Patna Treasury, Patna.
16. Bikrama Singh, s/o Late Indrajeet Singh, Accountant, Sasaram Treasury, District-Rohtas.
17. Shashi Shekhar Pandey, s/o Baidyanath Pandey, Accountant, Sub-Treasury Barh, Dist-Patna.
18. Ajay Kumar Thakur, s/o Devendra Nath Thakur, Accountant, Sub-Treasury, Barh, District-Patna.
19 Anand Mohan Singh, S/o Late Yogendra Pd. Singh, Accountant, Motihari Treasury, Dist-East Champaran.
20. Sachidanand Choudhary, S/o Late Markandey Choudhary, Accountant, Jamui Treasury, District-Jamui.
21. C.P. Maskara, S/o Lakhi Pd. Maskara, Accountant, Jamui Treasury, Dist-Jamui.
22. Krishna Murari Prasad, s/o Late Kesho Prasad, Accountant, Gopalganj Treasury, Dist-Gopalganj.
23. Onkar Prasad, s/o Late Bandi Lal, Accountant, Aurangabad Treasury, District-Aurangabad.
24. Virendra Kumar Kamlesh S/o Rajendra Prasad Rajak, Accountant, Madhubani Treasury, Dist-Madhubani.
25. Ashok Kumar, s/o Jagdish Prasad, Accountant, Muzaffarpur Treasury, Dist-Muzaffarpur.
26. Neyaz Ahmad, S/o Late Mahmood Alam, Accountant, Gaya Treasury, Dist-Gaya
27. Ram Krishna Ram,s/o Late Ram Chandra Prajapati, Accountant, Chapra Treasury, District-Saran.
28 Arun Kumar Gupta, s/o Late Gaggan Prasad, Accountant, Chapra Treasury, Dist-Saran.
29.Bijay Kumar, s/o Bal Krishna Prasad, Accountant, Munger Treasury, Dist-Munger.
30 DharmendraKumar, s/o Late Dwarika Pd. Singh, Accountant, Bettiah Treasury, Dist-West Champaran.
31.Vinod Kumar Sharma, s/o Ram ChandraSingh, Accountant, Saharsa Treasury, Dist-Saharsa
32. Arun Kumar Singh, s/o Laxmi Prasad, Accountant, Saharsa Treasury, Dist-Saharsa.
33. Bohla Nath Gupta, s/o Chhote Lal Gupta, Accountant, Saharsa Treasury, Dist-Saharsa.
34. Jai Prakash, s/o Basudeo Prasad, Accountant, Madhepura Treasury, Dist-Madhepura.
35. Om Prakash Verma, s/o Kashi Prasad Verma, Accountant, Madhepura

Treasury, Dist-Madhepura.
36. Bhav Nath Jha, s/o Late Yadubir Jha, Accountant, Nawadah Treasury, Dist-Nawadah.
37. Rajani Kant Sharma, s/o Late Kedar Nath Sharma, Accountant, Nawadah Treasury, District-Nawadah.
38. Ajay Prakash Singh, s/o Krishna Prakash Singh, Accountant Muzaffarpur Treasury, Muzaffarpur.
39. Binay Chandra Mishra, s/o LateSushil Mishra, Accountant, Patna Treasury, Patna.

.... Respondent/s

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Appearance :
(In LPA No. 908 of 2006)
For the Appellant/s : M/S Chittranjan Sinha, Mr. Sitesh Chandra Mitra , Amrendra Narayan & Deepak Kumar

For the Respondent/s : Mr. Kaushal Kumar Jha,AAG-14

(In LPA No. 963 of 2006)
For the Appellant/s : Mr. Abhay Kumar Singh,Sr.Adv. & Delip Kumar Tiwary
For the respondents : Mr. Sharad Kumar Sinha,G.P.15.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 29-06-2015

An imperfect, ad-hoc and wavering approach to an otherwise important and serious matter, has generated voluminous litigation, and made the future of hundreds of employees uncertain. The concerned Departments of the State Government are squarely to blame for this.

2. As in the other States in the country, quite a large number of Public Corporations were created in the State of Bihar also,

without assessing their utility or viability. On the Corporations becoming unviable, the immediate problem was to accommodate the employees , since the Corporations were not in a position to pay their emoluments. One of the methods adopted by the State was to absorb such employees, in the other viable Corporations or Departments of Government.

3. The State of Bihar passed a Resolution on 1-3-1996(Annexure-4 to L.P.A. No. 908/06) initiating proposal for taking of the employees of the State Corporations, who were working on Accounts side; in the Treasury Department of the State. Options were invited and a semblance of selection was also undertaken. One of the conditions was that, on being found fit, the employees of the Corporation would be engaged in the Treasury Department for a period of three years, and if their work is found satisfactory, the deputation would be extended by two more years. It was made clear that the continuance of such employees will be subject to the filling up the vacancies through regular process.

4. The employees of the Corporations, who are engaged in the Treasury Department, gained an impression that on conclusion of three years there, they would be entitled to be absorbed in the same Department, which is a State Service. They filed writ petitions in this behalf, which, in turn were disposed of with a direction to the

Government to consider their cases.

5. Ultimately, the Government passed an order on 8-3-2006 providing for absorption of such employees, but in the various District Treasuries in the appropriate scale of pay. The employees had grievance about the pay-scales attached to the posts as well as the cadre in which they are proposed to be absorbed. Challenging this, and other relevant aspects the employees filed C.W.J.C. Nos. 3890/06 and 6020/06. The Government filed counter-affidavit opposing the writ petitions.

6. After considering the contentions advanced by the parties in detail, the learned single Judge passed a common judgment dated 4-9-2006 directing that the absorption of the employees shall be in the cadre of Upper Division Clerk, and extended the pay-scale attached to that post before. The employees are not satisfied with same and filed these two L.P.A.

7. Heard Mr. Chittranjan Sinha, Senior counsel appearing for the appellants in L.P.A. Nos. 908/06 and also Mr. Abhay Kumar Singh, senior counsel appearing in L.P.A.No. 963/06 and Mr. Kaushal Kumar Jha, learned counsel for the respondents.

8. The proposal to take the employees of the State Corporations working on the Accounts side, on deputation to the Treasury was made in the year 1996. Though it is vehemently

contended on behalf of the appellants that a promise was made to the effect that on completion of three years of service, they would be absorbed in the Treasury service, the same is not evident from the records. C.W. J.C.No. 8894 of 2002 and its analogous cases were filed with a prayer to direct the Government to absorb the employees. It was only on 8-3-2006, that the Government passed an order directing that such of the employees who have been taken on deputation from the State Corporations and working in the Treasury Department shall be absorbed, but against the vacancies in the District Cadre, meaning thereby that the absorption was not to be in the vacancies available in the Treasury Department . The relevant pay scale was also indicated.

9. By the time the appellants were engaged in the Treasury Department on deputation, the posts of Lower Division Clerk and Upper Division Clerk were of unified cadre. While they were continuing on deputation, demerger took place and the post of Upper Division Clerk was placed in a higher scale of pay. Further ,absorption in the Treasury Department would have been more beneficial to the appellants. It is with these grievances that the appellants filed C.W.J.C. Nos. 3890/06 and 6020/06, claiming following reliefs:

"(i) To quash the decision of the Govt. in the Finance Department contained in letter no. 1437 F(2), dated 8-3-2006(Ann.1) by which the Collectors have been directed to absorb by appointment the deputationists in the Treasuries from Boards/Corporations in the joint cadre of L.D. Clerks of the Collectorate in the scale of pay of Rs.3050-4590/- in relaxation of age limits under certain terms and conditions contained therein.

(ii) To quash the Resolution as contained in Memo No. 1096, dated 22-2-2006 in so far as the deputationists from the Boards/Corporations are concerned, by which the cadre of the employees in the Treasuries of the State has been amalgamated with the Collectorate cadre of L.D. Clerks in the scale of pay of Rs.3050-4590/-

(iii) Also to quash the decision taken by the Cabinet in Memorandum No. 7128, dt. 30-12-2005 in compliance of which the aforesaid two impugned orders dated 22-2-2006 and 8-3-2006 have been issued. They are ex-facie arbitrary, malafide and contrary to the decision already taken by the Governor during President's Rule on 6-10-05 by concealing material facts to mislead the Govt. And there is no rationale in bye-passing the said decision of the Governor during President's Rule.

(iv)For a direction for absorbing the petitioners and similarly situated persons in posts under the State Govt. equivalent to those held by them immediately before their deputation."

10.The learned single Judge granted certain reliefs, such as, that the absorption shall be against the post of Upper Division Clerk ,with corresponding scale of pay, and that pay protection shall be ensured.

11. The principal contention advanced in these appeals is that had the order of absorption been passed in the year 2005, the appellants would have become eligible for pension.

12. It is important to note here that nowhere in their writ petitions the appellants herein made any grievance that the delay in issuing the order of absorption has resulted in denial of pension to them. The same was not put in issue, at all. Therefore, we do not take the plea of the appellants, in this regard into account. The learned single Judge has taken into account all the correspondences that ensued in relation to the matter and felt that the appellants cannot insist that they must be absorbed in the Treasury Department alone. We are in agreement with the findings made in the writ petitions.

13. In the present appeals certain important developments have taken place. Through its order dated 24-4-2007 the Government has withdrawn the proceeding dated 8-3-2006 in their entirety. In the year 2010 some aspect of the absorption was restored. However, these developments are not subject matter of these proceedings. If the appellants feel that the subsequent resolutions are

detrimental to them, it shall be open to them to work out their remedies.

14. We, therefore, uphold the order of the learned single Judge and dismiss the appeals, but leave it open to the appellants to work out their remedies in case any order passed during the pendency of the appeals has resulted in detriment to them.

(L. Narasimha Reddy,CJ)

BK.Roy/-AFR

(Sudhir Singh, J)

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